

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50002

In the Matter of:

CHRYSLER LLC, et al.

Debtors.

United States Bankruptcy Court

One Bowling Green

New York, New York

June 3, 2009

11:06 AM

B E F O R E :

HON. ARTHUR J. GONZALEZ

U. S. BANKRUPTCY JUDGE

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2 HEARING re Motion by Debtors authorizing the rejection of
3 certain unexpired leases of property.

4

5 HEARING re Motion by Debtors authorizing the rejection of
6 executory contracts and unexpired leases with certain
7 domestic dealers and granting certain related relief.

8

9 FINAL HEARING re Motion by Debtors authorizing them to continue
10 purchase card agreement and granting relief from the automatic
11 stay.

12

13 HEARING re Motion by Fifth Third Bank for relief from the
14 automatic stay.

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16 HEARING re Motion by CSX Transportation, Inc. for adequate
17 protection.

18

19 HEARING re Motion by Debtors granting additional time to file
20 reports of financial information or to seek a modification of
21 such reporting requirements.

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1 HEARING re Motion by Debtors authorizing the retention and
2 employment of Cahill Gordon & Reindel LLP as special counsel to
3 three members of the Board of Managers of Debtor Chrysler LLC,
4 nunc pro tunc to the petition date.

5

6 HEARING re Second Omnibus Motion of Debtors authorizing the
7 rejection of certain executory contracts.

8

9 HEARING re Motion by Debtors approving procedures to sell or
10 transfer certain de minimis assets, free and clear of liens,
11 claims and encumbrances, and to pay market rate broker
12 commissions in connection with such sales without further court
13 approval.

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15 HEARING re Motion to appoint Official Non-Union, Non-Retiree,
16 short term, and long term disabled employee committee.

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18 HEARING re Motion of Hoegh Autoliners as for adequate
19 protection.

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21 HEARING re Motion of the Ad Hoc Committee seeking fairness for
22 warranty and Lemon Law Claimants for the appointment of an
23 official committee of warranty claimants.

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1 HEARING re Motion by Debtors authorizing adequate protection
2 procedures for certain potential possessory lien holders and
3 granting certain related relief.

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5 HEARING re Motion by Debtors authorizing Chrysler LLC to enter
6 into a settlement of their terms set forth in the binding terms
7 sheet among Chrysler LLC, Chrysler Holding LLC, Daimler AG,
8 Cerberus, the DC Contributors, and the Pension Benefit Guaranty
9 Corporation.

10

11 HEARING re Motion by Debtors authorizing the Debtors to
12 implement post closing modifications to Chrysler LLC's
13 governance structure, approving the release of officers and
14 directors and authorizing the Debtors to obtain replacement
15 directors and officers liability insurance.

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17 HEARING re Crain CDF LLC's motion for continuance of hearing on
18 Debtors omnibus motion to authorize the rejection of executory
19 contracts and unexpired leases with certain domestic dealers.

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1 P R O C E E D I N G S

2 THE COURT: Please be seated.

3 MR. ELLMAN: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MR. ELLMAN: This is Jeffrey Ellman from Jones Day on
6 behalf of the debtors. I wanted to begin with the agenda for
7 today. We had submitted an approved agenda letter which is a
8 forty-two page, sixteen item agenda. It's fairly long, but I
9 think we only have eight matters of the sixteen that are going
10 forward today. Only two of them have any partial contest at
11 all as far as I'm aware. So we're hoping to be fairly quick
12 today. For the record, the first four items, I believe, are
13 all adjourned and the fifth item has been withdrawn.14 So I believe, Your Honor, the first item actually up
15 for consideration today is number 6 which is a motion by Fifth
16 Third Bank for relief from the stay. I believe their counsel
17 is either here or on the phone to present that.18 MR. BANK: Yes. Jason Bank, Your Honor, on behalf of
19 Third Bank. Good morning.

20 THE COURT: Good morning.

21 MR. BANK: This is a motion for relief from the
22 automatic stay. No objections have been filed to the motion.
23 Pursuant to discussions with the debtors' counsel we have made
24 certain changes to the order and the debtors have approved
25 those changes. And the proposed order was uploaded with a

1 notice of presentment under docket number 3079. So unless the
2 Court has any questions regarding the motion, we would request
3 that the Court enter that revised order.

4 THE COURT: All right. Anyone else wish to be heard?

5 MR. ELLMAN: Your Honor, again, Jeffrey Ellman for
6 the debtors. Just standing to confirm that we have approved
7 the form of order as submitted.

8 THE COURT: Thank you. Anyone else? Based upon the
9 pleadings as filed, the representations made on the record, and
10 no opposition having been posed, I will grant the relief.

11 MR. BANK: Thank you, Your Honor.

12 THE COURT: You're welcome.

13 MR. ELLMAN: Your Honor, the next item on the agenda,
14 number 7, was a motion that's been approved on an interim basis
15 previously to authorize continued use of a purchase card. Your
16 Honor, although we had notice of this for today as a final
17 hearing on that motion, I understand that there's been a
18 request that we've agreed to adjourn this matter to June 18th,
19 and we would intend to put this over to that date, Your Honor.

20 THE COURT: All right, it's adjourned.

21 MR. ELLMAN: The next item is number 8, and this is a
22 motion by the debtors for additional time to file reports under
23 Bankruptcy Rule 2015.3 or for additional time to file a motion
24 to request modifications of those reporting requirements. Your
25 Honor, this is a fairly new rule that requires periodic

1 reporting relating to the value, operations, and profitability
2 of nondebtor entities that the debtors hold a substantial or
3 controlling interest in and that are not publicly traded
4 companies.

5 In this case, looking at our corporate structure, we
6 have about forty-eight entities that would fall into this
7 category and would require reporting. The first of these
8 periodic reports would be due five days before our Section 341
9 hearing under the rule. The 341 hearing is on the 22nd of
10 June, so this would be due -- if my math is correct -- the 17th
11 of June.

12 We had asked to extend the date to July 31st, to
13 either file the report or the motion to modify the
14 requirements. We believe there's ample cause under Rule
15 9006(b)(1) for the extension, given the substantial size and
16 complexity of this matter, the numerous activities the debtors
17 are involved in, especially in preparing for our now approved
18 sale, and the number of entities that are involved here that
19 will actually be sold and no longer be part of the estate. We
20 think it suggests that we should have more time to work through
21 what the report should look like if it's needed, etcetera, and
22 work with the U.S. Trustee and the creditors' committee on
23 that.

24 Although the rule is fairly new, we did cite a few
25 examples of precedent for extensions of this deadline. There

1 has been no opposition to this relief and we'd ask that the
2 Court approve it.

3 THE COURT: All right. Anyone else wish to be heard?
4 The request is granted.

5 MR. ELLMAN: I have a form of order, if I might
6 approach?

7 THE COURT: Yes. Thank you.

8 MR. ELLMAN: Your Honor, the next item is docket
9 number 9 -- agenda item number 9, which is a motion seeking
10 relief to reject certain aircraft leases pursuant to Section
11 365. These are aircraft leases with an affiliate of General
12 Electric. These leases are not needed or valuable to the
13 debtors' estates. They're not part of the sale to New
14 Chrysler. In addition, Your Honor, our DIP financing facility
15 and the credit agreement at section 5.1 in fact requires the
16 debtors to divest of these aircraft. And so this motion, we
17 believe, is appropriate for all those reasons. Also the motion
18 seeks rejection of some related agreements we've referred to as
19 charter agreements that address things like management
20 operation, storage and maintenance of the aircraft. Obviously
21 those are no longer needed either if we don't have the
22 aircraft.

23 We have turned over, surrendered possession of the
24 aircraft on May 12th. That would be the effective date of the
25 proposed rejection. There is some other ancillary relief in

1 the form of order dealing with the security deposits that had
2 been posted in respect of the aircraft and to allow those to be
3 applied to the claims of the lessor. And that's been described
4 in our motion.

5 There are no objections filed, Your Honor, to this
6 motion. There have been a couple of new paragraphs added to
7 the form of order, which I'm happy to hand up a blackline.
8 These deal with the charter agreements, the ancillary
9 agreements, and some setoff rights that exist in those
10 agreements, the monies owed back and forth. So the order
11 effectively allows for the permitted setoffs under the
12 agreement, only pre versus pre-petition setoffs and post versus
13 post-petition setoffs. The net effect of all of that would be
14 the debtors receiving back from Pentastar, which is the
15 counterparty to those agreements, \$263,763.87.

16 These setoff arrangements have been discussed with
17 our creditors' committee. My understanding is that they have
18 no objection to the additional setoff relief that we've added
19 to the order. We believe it's an exercise of our appropriate
20 business judgment to reject these agreements and enter into the
21 rest of the proposed relief, and we'd ask the Court to approve
22 the order as modified.

23 THE COURT: Anyone else wish to be heard? No further
24 comment being heard, I'll grant the relief as requested.

25 MR. ELLMAN: Your Honor, if I might approach, I have

1 a copy of the order with the blackline.

2 THE COURT: Yes. Thank you.

3 MR. ELLMAN: The next item, Your Honor, agenda item
4 number 10, is another motion for rejection. This is the second
5 omnibus motion to reject certain executory contracts. This
6 deals simply with two hotel contracts for meetings, conferences
7 that had been scheduled by the debtors that in light of the
8 bankruptcy have now been cancelled. The contracts are no
9 longer needed, provide no value, and are a burden to the
10 estate. It's not part of the sale, Your Honor, and in our
11 business judgment the debtors have determined to reject these
12 agreements. There are no objections and we'd ask for this
13 motion as well to be approved.

14 THE COURT: Anyone else wish to be heard? No further
15 comment being heard, I'll grant the relief.

16 MR. ELLMAN: May I approach?

17 THE COURT: Yes. Thank you.

18 MR. ELLMAN: Your Honor, number 11 on our agenda
19 letter was the application by the debtors to retain Cahill
20 Gordon as special counsel. Cahill represents, as we describe
21 in that application, three independent members of the board of
22 managers of Chrysler, LLC.

23 The role that Cahill would serve would be to advise
24 the independent board members about the Chapter 11 process,
25 issues that arise in these cases and the like. This would be a

1 retention under Section 327(e) and Cahill would charge on an
2 hourly basis. There has been disclosure by Cahill of their
3 connections to these cases. There was an affidavit filed by
4 Joe Levitan which is attached as Exhibit A to the application.
5 Since that time, there have been discussions with the U.S.
6 Trustee's Office and some additional information had been
7 provided by the Cahill firm. We understand that satisfied any
8 inquiry that the U.S. Trustee's Office might have had about
9 this application. And information also has been submitted to
10 the Court and filed as a supplemental affidavit in the last
11 couple of days, and so that's of record as well. There have
12 been no other objections filed. And Your Honor, with a few
13 moderate corrections to the order, mostly typographical type of
14 corrections, we would ask that this application be approved.

15 THE COURT: Anyone else wish to be heard? No further
16 comment being heard, I'll grant the relief.

17 MR. ELLMAN: May I approach?

18 THE COURT: Yes.

19 MR. ELLMAN: Your Honor, number 12 on the agenda 12
20 is the pro se motion of William Thomas Wilson that we've
21 discussed in this court several times previously. I think each
22 time we've made sort of a step forward in resolving this issue.
23 I think we're probably at this point completed with this.

24 You might recall that Mr. Wilson is a participant --
25 is a beneficiary of a long term disability plan that the

1 debtors have. The questions that have been raised were largely
2 relating to whether that plan would continue into the future,
3 if it would be taken on by the buyer.

4 Last time we were here we pointed to docket number
5 1963, which was the notice of intent to assume and assign,
6 which it did -- I think on page 5 of the attachment, it's annex
7 B -- identify the plan that Mr. Wilson was concerned with, a
8 long term disability plan, as a plan that would be the intent
9 of the debtors to assume and assign to the new buyer. At that
10 time we indicated that the buyer still had the right to
11 confirm, or not, that agreement as one to be assumed and
12 assigned.

13 Since that time, we have spoken to the buyer's
14 counsel and we understand and we can represent now that that is
15 in fact a plan that will be assumed and assigned to the buyer.
16 It will an assumed liability that will continue with the new
17 company post-closing. And with that, we would hope that this
18 would resolve the concerns raised by Mr. Wilson.

19 THE COURT: Mr. Wilson, are you on the phone?

20 MR. WILSON: I am, Your Honor. I apologize for how I
21 sound. I had an emergency admittance to the hospital a very
22 few days ago. I had a large part of my spine removed from my
23 sacral nerve. But I'm here and I thank counsel for the
24 comments. They've kept their word across the board, Your
25 Honor, and I thank you for the integrity of your court. You

1 guys have been -- for somebody that doesn't know anything about
2 the law, you've made me feel very comfortable and not
3 intimidated and that my voice would be heard. And I didn't
4 want to miss today. Thank you, Your Honor.

5 THE COURT: I hope you feel better. But Mr. Wilson,
6 I want to explain, I think they've satisfied your concern, but
7 what you have before me is a motion for a committee, which I
8 don't believe is necessary.

9 MR. WILSON: Right.

10 THE COURT: Would you agree with that?

11 MR. WILSON: I do, sir.

12 THE COURT: So you can either -- should I just mark
13 that motion as withdrawn on your part at this point?

14 MR. WILSON: Yes, please.

15 THE COURT: All right, thank you. I hope you feel
16 better.

17 MR. WILSON: Thank you, sir. Thank you.

18 MR. ELLMAN: Thank you, Your Honor. That would take
19 us to -- I think right on schedule to item 13. And I'll cede
20 the podium to my colleague, Mr. Hamilton, who will present that
21 motion. Thank you.

22 MR. HAMILTON: Good morning, Your Honor. Robert
23 Hamilton of Jones Day on behalf of Chrysler, LLC and its
24 affiliated debtors. With respect to the motion of the debtors
25 and debtors-in-possession for entry of an order authorizing the

1 debtor Chrysler, LLC to enter into a settlement on the terms
2 set forth in the binding term sheet with the PBGC, Cerberus and
3 Daimler.

4 We originally filed this motion on May 19th, and with
5 the Court's permission, set it for a hearing on May 27th in
6 connection with a sale hearing, and presented Mr. Chapman to
7 testify as to the terms of this settlement at that hearing. He
8 was crossed by counsel for the UCC and Getrag. At the
9 conclusion of the sale hearing, we asked the Court to adjourn
10 the consideration of this motion till today in contemplation
11 that we would be able to reach an agreement with all the
12 parties to the term sheet on the actual terms of the settlement
13 agreement that was contemplated by the term sheet. And we have
14 been successful in doing so, in terms of reaching an agreement
15 in principal on that basis.

16 Three parties filed an objection to the motion that
17 we filed on May 19th. One was filed by the unsecured
18 creditors' committee. And since the time that they filed their
19 objection, the parties have been successful in resolving the
20 concerns that were raised by the creditors' committee in that
21 objection. And the settlement agreement that we intend to
22 submit to Your Honor resolves the concerns that were expressed
23 by the unsecured creditors' committee. And I'm sure Mr. Mayer
24 will be able to confirm that fact at today's hearing.

25 The only other two objections that were filed to the

1 motion -- one was filed as part of a sort of omnibus objection
2 by the ad hoc Committee of Affected Dealers, represented by the
3 Squire, Sanders firm, that objected to this motion, the tax
4 settlement agreement motion and the corporate governance motion
5 as being motions that prove their argument that our sale motion
6 was really a sub rosa plan.

7 We believe that that omnibus objection, to the extent
8 it's predicated on the sub rosa plan argument, was effectively
9 overruled by the Court in the approval of a sale motion.
10 Nevertheless, Squire, Sanders certainly has the right to object
11 to this motion today based on their filing, but I don't believe
12 they're in the courtroom today, and I don't think they intend
13 to pursue that objection, Your Honor, because it was predicated
14 solely on their sub rosa plan argument.

15 THE COURT: Is there anyone here or on the telephone
16 with respect to this motion on behalf of the Affected Dealers
17 represented by Squire, Sanders?

18 All right. No response being heard, I'll assume that
19 they recognize that this issue was dealt with in the opinion
20 dealing with the sale order.

21 MR. ELLMAN: Thank you, Your Honor. The only other
22 party that objected to our motion was Getrag, and they did
23 cross-examine Mr. Chapman at the hearing. They raised what I
24 think are two legal issues. One is based on our right to
25 release all derivative claims that belong to the estate because

1 it impacts their estate because one of them is in bankruptcy.
2 And they also challenged some of the language in the schedule F
3 that we attached, suggesting that it went too far in releasing
4 creditors' claims under the Second Circuit's decision in
5 Metromedia.

6 We believe, and are prepared to address both of those
7 legal arguments. We think that the second one has been
8 resolved by the actual terms of the release and that is going
9 to be included in the final settlement agreement that we submit
10 to the Court. And I did have the opportunity to discuss that
11 with counsel for Getrag right before the start of the hearing.
12 And I believe that their first argument with respect to the
13 dueling battles of the estates is something that we're prepared
14 to argue today, Your Honor.

15 What I would propose -- we reached an agreement, in
16 principal, with all of the parties to the settlement agreement,
17 depending on how you define it, either late last night or early
18 this morning. We are in the process of putting down on paper
19 the draft that reflects all of the issues that were finally
20 resolved, in principal, last night and this morning. That
21 draft has been circulated among the parties to the settlement
22 agreement. It is still being wordsmithed, Your Honor.

23 And what we would propose is to take a recess with
24 respect to this motion at this time and submit the actual
25 settlement agreement that we want the Court to authorize the

1 debtors to enter into, to the Court after a lunch break,
2 perhaps at 2 o'clock. And we believe that that will give us
3 the opportunity to show the actual final language to counsel
4 for Getrag and determine whether or not we need to go forward
5 with his objection, and if so, then have legal argument on his
6 objection at that time.

7 If the Court determines, at the end of that argument,
8 that the debtors should be given the authority to enter into
9 the settlement agreement, then we will submit it to the Court
10 and to counsel for Getrag. We would then ask the Court to
11 enter an order that just authorizes us to enter into the
12 settlement agreement attached as Exhibit A to the proposed
13 order that we'd then give to the Court, if that would be
14 acceptable to the Court.

15 THE COURT: Before I answer that question, let me
16 hear from the objector involved in this particular issue.

17 MR. SEABOLT: Your Honor, Scott Seabolt on behalf of
18 Getrag. Your Honor, with respect to the proposal that's just
19 been laid out, I have not had an opportunity to review any of
20 the revised drafts or what is currently under consideration,
21 and obviously would like an opportunity to do that. I am more
22 than happy to recess this argument until this afternoon after
23 I've had a chance to review that revised language and make an
24 assessment as to whether or not it addresses our concerns or
25 not, whatever Your Honor's pleasure. Or we would proceed with

1 argument now. It probably would make more sense -- I don't
2 know the Court's schedule -- to give us that opportunity so we
3 can determine what, if anything, we're really fighting about at
4 this point. I just haven't had an opportunity to see that new
5 language.

6 THE COURT: All right, thank you. Anyone else?

7 MS. FELDSTEIN: Yes. Good morning, Your Honor, Hydee
8 Feldstein of Sullivan & Cromwell on behalf of Fiat and the
9 purchaser. And Your Honor, I think it's unfortunate that I
10 have to rise this morning in response to the settlement, but I
11 simply wanted to leave a couple of thoughts with the Court.

12 At this time this transaction and the settlement
13 language I have seen, I am concerned, may inadvertently or
14 inadvertently release claims that relate to purchased assets and
15 assumed contracts under the sale agreement. We've been working
16 very diligently with counsel to try to make sure that the final
17 language of the settlement agreement does not do so.

18 But in fact, the language that we have seen would
19 have this settlement agreement take effect immediately prior to
20 the sale to Fiat. And we have a number of concerns regarding
21 ongoing commercial relationships between the nondebtor
22 subsidiaries who are not before this Court and some of the
23 entities that might be deemed to be affiliates encompassed
24 within this release as well as a few of the contracts and
25 assets that are being acquired.

1 So I didn't want to leave this morning without at
2 least letting the Court know that we do have those concerns,
3 that the timing of these releases vis-a-vis the purchase
4 agreement is, at least insofar as ongoing commercial
5 relationships and leasing and indemnity arrangements, of
6 concern to us, and we would expect that our concerns be taken
7 into account in the final language. I hope not to have to rise
8 this afternoon.

9 THE COURT: All right.

10 MS. FELDSTEIN: Thank you.

11 THE COURT: Thank you. Mr. Mayer?

12 MR. MAYER: Thank you, Your Honor. Thomas Moers
13 Mayer of Kramer Levin Naftalis & Frankel, counsel to the
14 official committee of unsecured creditors. We filed a limited
15 objection, and the headline is that Mr. Hamilton is correct
16 that we have reached an agreement that will allow us to
17 withdraw that limited objection and not object to this
18 settlement.

19 I wanted to put a few things on the record, because I
20 may or may not be able to return this afternoon. I may leave
21 some colleagues to watch the store. But first, our objection
22 focused on the fact that the settlement agreement was releasing
23 claims against Daimler, and we had not had a chance to
24 investigate that. We have an agreement with Daimler that's
25 been worked out, and I don't mean to vary the terms of what's

1 in text. The broad strokes are that we have forty-five days
2 after the entry of this order to investigate. And I won't go
3 through the mechanics. Those are laid out in the document.
4 But we have an agreement with Daimler on that score, and Mr.
5 Garrity can confirm.

6 MR. GARRITY: Good morning, Your Honor. Jim Garrity
7 from Shearman & Sterling on behalf of Daimler. Mr. Mayer is
8 correct. We have, after some discussion, reached an agreement,
9 which we understand, and Mr. Mayer has confirmed, addresses
10 their concerns. And it is going to be more fully laid out, to
11 Mr. Mayer's point, in the agreement.

12 THE COURT: Thank you. Anyone else? Oh, you haven't
13 finished yet?

14 MR. MAYER: If I may, Your Honor, just a few more
15 things. With respect to claims against Cerberus, our pleading
16 in the case -- we did a moderate amount of diligence, we
17 continue to do that diligence. And the final agreement is
18 going to contain a representation and warranty that I have
19 already confirmed with Cerberus's counsel to the effect that
20 Cerberus did not receive, directly or indirectly, dividends or
21 other distributions on account of its equity interests in
22 Chrysler, LLC or in any of Chrysler, LLC's debtor subsidiaries.
23 That will be part of the final document. I understand there is
24 not a problem with that.

25 And finally, as a general rule, the other objection

1 we had advanced, and which is relevant to the Getrag argument,
2 is that we were concerned about the scope of the releases and
3 their effect that it might have on claims that creditors had.
4 And there was at some point some reference in the papers to any
5 sort of an injunction. It was very material to the committee
6 that those claims of creditors are not affected by this
7 agreement. Whatever claims creditors have, they continue to
8 have against these parties. And the order will not contain an
9 injunction against any creditor pursuing any claim. The order
10 that is before Your Honor today will not contain any injunction
11 of that effect.

12 And the details of what I've just said will be set
13 forth in the final order that is provided to you and in the
14 agreement, but both of those things were important to us and we
15 have reached agreement on both of them. It is possible that my
16 colleague, Mr. Daniels, will be here this afternoon to monitor
17 this. But we effectively have a deal and we withdraw our
18 limited objection based on that.

19 THE COURT: All right, thank you. Mr. Hamilton?

20 MR. HAMILTON: Your Honor, I --

21 THE COURT: Go ahead.

22 MR. HAMILTON: I did leave one thing out. I meant to
23 mention to the Court that while the United States government
24 did not file an objection to our motion, they did raise
25 concerns regarding a clarification. And I wanted to confirm on

1 the record at this time that the settlement agreement that we
2 intend to submit to Your Honor this afternoon resolves all of
3 the concerns that the United States government had expressed to
4 us as well.

5 THE COURT: All right. Regarding adjourning till
6 this afternoon, though, how much time do you actually need to
7 see if you could work this out?

8 MR. HAMILTON: I need time to get the document
9 physically here from midtown, that is being prepared on our
10 system at the offices of Jones Day in midtown. And then I'm
11 going to need, presumably, a sufficient amount of time to find
12 out if other parties to the agreement continue to have
13 substantive objections to the language that we believe
14 everybody's agreed to. I don't believe that will take more
15 than a half hour to determine if they have problems. We intend
16 to go forward and ask the Court to authorize us to enter into
17 this settlement agreement based on the document that we deliver
18 to you this afternoon. And if another party to the settlement
19 agreement or another party-in-interest wants to suggest that
20 this Court should not authorize us to enter into a settlement
21 agreement based on those terms, I don't need additional time to
22 try to talk them out of it at this point. We have a document
23 that we're prepared to ask the Court to approve. We just need
24 to get it here from midtown.

25 THE COURT: All right. And how large is this

1 document?

2 MR. HAMILTON: It's --

3 THE COURT: I think Mr. Mayer's looking at it.

4 MR. HAMILTON: Yes, it's a thick document, Your
5 Honor.

6 MS. FELDSTEIN: It's twenty pages.

7 MR. HAMILTON: The controversial provisions, the ones
8 that relate to the Getrag objection and to any issues that
9 Sullivan & Cromwell may have on behalf of the purchaser, or
10 parties to the agreement may have, are all contained in
11 essentially one section of the document, section 6, which is
12 the terms of the releases that are exchanged by the parties.
13 And that provisions is about three to four pages, I think.

14 THE COURT: All right. Well, it's probably more
15 efficient if you have someone e-mail that to my chambers. I'll
16 direct them to make enough copies. And the reason I suggest
17 this, from my standpoint, is I would like to be concluded with
18 this process by 2 o'clock, as opposed to starting at 2 o'clock.

19 MR. HAMILTON: We can reconvene at any time, Your
20 Honor, that's convenient for you.

21 THE COURT: All right. I'd like to reconvene at 1
22 o'clock.

23 MR. HAMILTON: Fair enough.

24 THE COURT: If you need a little more time because
25 you're making progress, then I can be flexible with that. But

1 I'd like to get the controverted sections here as soon as
2 possible so that you can work through them.

3 MR. HAMILTON: I will undertake to have them e-mailed
4 to chambers within -- if we can, within the next twenty minutes
5 or half hour, Your Honor.

6 THE COURT: All right. Thank you.

7 MR. HAMILTON: Thank you.

8 THE COURT: Then I'll adjourn -- we'll stand now
9 adjourned until 1 o'clock. Continue till 1 o'clock.

10 (Break in audio)

11 All right, Mr. Ellman, two more.

12 MR. ELLMAN: The next item, Your Honor, was item 13.
13 It was a debtors' motion -- or number 14, excuse me -- debtors'
14 motion on the governance issues, which I understand had been
15 bifurcated previously, partially to be heard today and
16 partially to be heard on the 18th of June. My understanding is
17 that is now, by agreement, going to be all heard together on
18 the 18th of June. So that would be adjourned. So that's not
19 going to go forward.

20 And there is one other matter on our agenda. I don't
21 know if it's being pursued or not, but there was a motion filed
22 by Crain CDJ for a continuance of the dealer rejection hearing
23 which is scheduled, at this point now, to start tomorrow
24 morning with evidence, as you're aware. That was item 16 on
25 this agenda.

1 Then item 15 was the motion by the Crain CDJ dealer
2 to continue the motion for another ninety days. I don't know
3 if anyone from the Sonnenschein or the Davidson firms are here
4 to present that. But that was their motion.

5 THE COURT: All right. Well, I'll ask. Is anyone
6 here on behalf of Crain CDF, LLC's motion for continuance,
7 either here in the courtroom or on the phone? All right, no
8 response being heard, the Court will treat it as either
9 resolved or denied, and I'll raise it tomorrow. I assume
10 counsel will be here tomorrow.

11 MR. ELLMAN: And just for the record, we had filed
12 opposing papers to that.

13 THE COURT: Yes.

14 MR. ELLMAN: And we did oppose the adjournment, as
15 the Court is probably aware.

16 THE COURT: I think as a practical matter, it's
17 probably moot, but --

18 MR. ELLMAN: I would think so, Your Honor. That's
19 all we have today.

20 THE COURT: All right. Thank you all.

21 (Recess from 11:37 a.m. until 2:04 p.m.)

22 THE COURT: Please be seated. All right, go ahead.

23 MR. HAMILTON: Your Honor, Robert Hamilton on behalf
24 of the debtors. We are prepared to go forward with the motion
25 and to argue the objection that was filed by the Getrag

1 parties. And then at the conclusion of that argument, we hope
2 to have a hand marked-up document that represents the
3 settlement agreement, with some open issues that the parties
4 will talk to the Court about at that time.

5 When we originally filed our motion on May 19th, we
6 were asking for authority to enter into the settlement
7 agreement based on the terms in the binding term sheet that was
8 signed by the parties on April 27, 2009, and also to include
9 language of the release that we attached to schedule F. The
10 release was much broader than the releases that were
11 contemplated in the binding term sheet. And they were broader
12 because that was the additional consideration that Cerberus and
13 Daimler, two of the parties to the settlement agreement, were
14 requesting as consideration for, among other things, forgiving
15 the second lien debt of two billion dollars that they had
16 advanced to the debtors in the 2008 time period which wasn't
17 expressly provided for in the binding term sheet that the
18 parties signed on April 27th.

19 The language that we submitted for the release in
20 Exhibit F has provisions in it that were broad and that
21 generated some concerns from certain parties and objections.
22 At all times, it has been the debtors' intent to seek court
23 authority to release claims that the debtors had authority to
24 bring on behalf of their estates against other parties,
25 Cerberus and their affiliates and Daimler and their affiliates.

1 At no time did the debtors ever intend to seek court authority
2 to release claims that belong to someone else other than the
3 debtors.

4 There is, as I'm sure the Court is aware, an
5 overlapping grey area that has produced three decades of case
6 law, where a debtor has authority to assert its claims, and
7 outside of bankruptcy individual creditors or shareholders of a
8 corporate entity have the authority under certain state law to
9 assert claims that are a derivative of the corporation's claims
10 against third parties. And those individual creditors or
11 shareholders sometimes are given, under state law, standing to
12 assert such claims, on a derivative basis, against third
13 parties.

14 And we were purporting in the release language to
15 release such claims on behalf of the debtor. And pursuant to
16 established case law in this circuit, and in particular one of
17 the first cases and one of the seminal cases was approximately
18 twenty years ago, Your Honor, that St. Paul Fire & Marine
19 Insurance Company case v. Pepsico -- the cite on that is 884
20 F.2d 688, and the key language is on page 701 of that decision.
21 It's from 1989. But that case and its progeny, in this circuit
22 and elsewhere, have established clearly that a debtor-in-
23 possession or a Chapter 11 trustee, if one is appointed, has
24 the authority to assert, prosecute, and compromise and settle
25 all claims of the estate, including claims that could otherwise

1 be asserted derivatively by creditors and/or shareholders
2 against third parties. And any such compromise or settlement
3 of a claim by a debtor-in-possession or a Chapter 11 trustee,
4 if one is appointed, is in fact binding on all creditors and
5 shareholders of the debtor.

6 And in fact, the case law says that once the debtor
7 files its Chapter 11 petition, the standing of individual
8 creditors and shareholders of that debtor to pursue such claims
9 derivatively is eliminated, and the only party that has
10 standing to pursue such claims against third parties is the
11 debtor or the Chapter 11 trustee.

12 And that's what we are proposing to do here. The
13 language that we had submitted in schedule F asked for an order
14 that expressly declared that derivative claims of third parties
15 are being released. And it also had a provision in it that
16 would enjoin creditors from pursuing such derivative claims
17 that we have the authority to release under the St. Paul Fire &
18 Marine Insurance Company case law and its progeny.

19 The authority of the Court to enjoin third parties in
20 the context of a 9019 settlement is somewhat mixed. And in the
21 actual negotiation of the actual settlement agreement, that we
22 expect to submit to Your Honor shortly, we no longer are
23 including an injunction provision that would enjoin third
24 parties from pursuing derivative claims, nor are we asking for
25 an express declaration that all such parties are deemed to have

1 released derivative claims. Instead, the settlement agreement
2 just clearly says that we are going to release all claims that
3 the estates have against Cerberus and its affiliates and
4 Daimler and its affiliates, subject to certain carve-outs and
5 exceptions.

6 THE COURT: So then except for the carve-out
7 exceptions, what you're asking for is that you release the
8 claims that belong to the estate. To the extent someone then
9 goes out and sues Cerberus, Cerberus raises the defense that
10 the claim that they're suing under belongs to the estate and
11 therefore was released.

12 MR. HAMILTON: Exactly, Your Honor.

13 THE COURT: All right.

14 MR. HAMILTON: Okay? We believe that has
15 resolved most of the objections and concerns that were raised
16 by various parties, including Getrag. But we do have some
17 continued objections. That resolved all the concerns that the
18 United States government had as well, since there's no reason
19 to carve out the government, since we're not releasing any
20 claims that might arguably belong to the government. We're
21 only releasing the state claims.

22 The continuing objection that I expect Getrag's
23 counsel to pursue still here at the podium arises out of the
24 fact that one of the Getrag parties is itself in Chapter 11.
25 And they are, as they have set forth in their objection, the

1 Getrag party that is itself in Chapter 11, went into Chapter 11
2 before we did. And his assertion is that their right under
3 state law to bring a derivative claim -- derivative of
4 Chrysler's right to bring a derivative claim against Cerberus
5 or Daimler or an affiliate of Cerberus or Daimler, is property
6 of their Chapter 11 estate. And therefore we can't compromise
7 that. We can't do anything with that without violating the
8 automatic stay in their case, under Section 362(a)(3). I think
9 that's the essence of the argument. He wants to argue we have
10 competing bankruptcy assertions of jurisdiction over a race,
11 which is the claim against third parties that we're trying to
12 release.

13 I think the fallacy of his argument is that while
14 under state law his client who is now in Chapter 11 may have
15 had standing to assert a claim that belongs to Chrysler against
16 third party, that did not create a property right or a property
17 interest. It's still our claim not his. And when we filed --
18 when Chrysler filed for Chapter 11, his standing to assert that
19 claim was eliminated, not by any action that we're taking in
20 violation of the automatic stay, but his standing was
21 eliminated as a matter of both state law and federal bankruptcy
22 law, in that the only entity that has the right to assert a
23 claim on behalf of all creditors of our debtor, is the debtor-
24 in-possession, or alternatively, a Chapter 11 trustee, if one
25 were appointed.

1 I believe, sometimes the absurd of the example
2 sometimes clarifies one's thinking in this regard. It has to
3 be that way, otherwise any time an individual that happened to
4 own shares of stock in a corporation, any time that individual
5 were to file their own bankruptcy petition, they could argue
6 that the corporation in which they own stock is therefore
7 barred from ever compromising a claim that they could have
8 asserted derivatively as a shareholder derivative action or as
9 a creditor derivative action. And there's just no authority
10 for that proposition, because obviously it would make no sense.

11 They do cite a case in which someone was trying to
12 deprive a debtor/creditor of sharing in proceeds of a
13 derivative action. And I would concede that their right to
14 share in any recovery of an action that we were to pursue on
15 behalf of all our creditors, is a property right that we can't
16 compromise. We couldn't, for instance, compromise a claim
17 against a third party for money and take money, and then say
18 we're not going to give it to you because you're in Chapter 11.
19 That would deprive them of their right to share in a recovery
20 of that derivative claim. And I believe that's all that case
21 establishes. It doesn't establish that their right to share in
22 the recovery of a derivative claim is the same thing as they
23 own the claim.

24 And I believe that properly analyzed, state law does
25 not give them an ownership right in the claims that we have the

1 authority to pursue against Daimler and Cerberus and their
2 affiliates and therefore have the authority to settle in
3 compromise of this settlement agreement. So we believe that
4 the Court should enter an order that authorizes us to release
5 all claims that we have, including claims that could otherwise
6 be asserted under state law derivatively by third parties.

7 Now, unless you have any further questions, I'll let
8 him make his presentation.

9 THE COURT: No, I don't have any further questions.

10 MR. SEABOLT: Thank you, Your Honor. Scott Seabolt,
11 appearing on behalf of the Getrag entities. Just by way of
12 background, Your Honor, Getrag is a debtor in bankruptcy in the
13 Eastern District of Michigan, as counsel mentioned. Getrag was
14 in a contract with Chrysler to build an 800,000 square foot
15 facility in Tipton, Indiana, and had eighty percent complete
16 construction on that project, including the machinery and
17 equipment, when the plug on that project was pulled by Chrysler
18 in October of last year.

19 Under the terms of the contract, Getrag has certain
20 reimbursement rights to the costs incurred in preparing and
21 constructing that facility, and those reimbursement claims
22 exceed 500 million dollars in this case, with respect to their
23 claims against Chrysler.

24 One of the things that Getrag is doing at present is
25 investigating claims that it may have against other parties

1 arising out of the termination, if you will, of this project.
2
3 And my charge here, given that my client is a debtor in
4 bankruptcy, is to preserve whatever right it may have to pursue
5 third parties or any other party, any parties at all, whether
6 those claims be direct, derivative or otherwise. And as a
7 debtor in bankruptcy, obviously we have fiduciary duties to our
8 own creditors. And we have creditors in that bankruptcy who
9 have filed claims in excess of 500 million dollars. So that's
10 first and foremost, is to preserve whatever claims this client,
11 this debtor in bankruptcy has, whether those claims be direct
or derivative.

With respect to the releases being sought here. The
first thing I would note is that typically in the case law on
this dealing with these third-party releases, demonstrate that
the releases typically are done in the context of a plan of
reorganization, not in the context of a 363 sale motion.
They're done at the conclusion of a bankruptcy proceeding where
there has been an opportunity for constituents to investigate
whatever potential claims may exist to bring funds into the
estate in the context of that plan of reorganization.

21 In this particular case, what we know is that there
22 has been no investigation of any potential claims that are
23 purported to be released here. As counsel alluded to this
24 morning, I was here last week during the testimony, and I had
25 an opportunity to examine Mr. Chapman relative to these

1 releases and this settlement agreement. And what Mr. Chapman
2 made clear is that the board and the corporation had not
3 undertaken any investigation whatsoever with respect to claims
4 that this estate might have against the parties currently being
5 released.

6 And our position is that without such an
7 investigation, there simply is not an appropriate basis
8 presented to the Court to assess whether or not the settlement
9 being proposed is fair and reasonable; that that investigation
10 is the minimum of what is required in order for the Court to
11 assess the fairness and the reasonableness of the proposed
12 settlement. And here, because there has been absolutely no
13 investigation, and in fact, if you read the moving papers, one
14 of the costs that they're trying to avoid is the cost of
15 actually performing that investigation, we have no idea what
16 potential claims may exist from the debtor against these
17 released parties, and therefore no idea whether or not the
18 consideration that's being offered here is fair and reasonable
19 and provides appropriate value to this bankruptcy estate. And
20 consequently, without that minimum showing, there simply isn't
21 a basis upon which to asses it.

22 In addition to that, Your Honor, we do believe that
23 while we understand the limitations on the ability of a
24 creditor to maintain derivative claims, there are circumstances
25 where a debtor can choose to abandon a claim --

1 THE COURT: Right. If you go there under 1109 and
2 focus on it for a second. In this circuit, it's STN. And
3 under STN, let's say the creditors' committee takes over the
4 action. Who does that claim belong to?

5 MR. SEABOLT: I understand, Your Honor.

6 THE COURT: No, just answer the question first, and
7 then you can argue the distinction.

8 MR. SEABOLT: The claim --

9 THE COURT: Who does the claim belong to?

10 MR. SEABOLT: -- the claim belongs to the estate.

11 THE COURT: Okay. Because that's important. Because
12 in a number of cases, even one issued by the Second Circuit
13 citing another case from the Southern District, they talk to
14 ownership. But it's really not ownership, it's the standing to
15 bring the action. The ownership belongs to the estate, but
16 unless the claims -- and I know in Enron certain claims were
17 actually -- the ownership of the claims was transferred to a
18 particular committee to pursue. But generally in these areas,
19 it's always standing, it's not ownership. It belongs to the
20 estate.

21 MR. SEABOLT: Right.

22 THE COURT: So taking that to the next step, whether
23 your client had standing or not at one point, the ownership of
24 who they would -- or in other words, who they would recover for
25 would have been the estate --

1 MR. SEABOLT: Understood.

2 THE COURT: -- or the corporation. So the filing of
3 bankruptcy merely changes the standing that your client has and
4 vests it all into the debtor and the debtor's estate. So how
5 does that then implicate the automatic stay?

6 MR. SEABOLT: Well, Your Honor, while I understand
7 the claim ownership issue, the standing to bring the claim is
8 nevertheless a right that is being impacted here.

9 THE COURT: Definitely.

10 MR. SEABOLT: And here, that right, to the extent
11 there is still a residual right to assert claims derivatively,
12 that right is being impacted --

13 THE COURT: But it's not a property interest.

14 MR. SEABOLT: -- I'm sorry?

15 THE COURT: It's not a property interest of your
16 estate.

17 MR. SEABOLT: Well --

18 THE COURT: It's a right to act on behalf of someone.
19 Now, what would happen if someone had the right to act on
20 behalf of them, but if they filed bankruptcy they didn't have
21 that right? If you had a situation where the individual could
22 act on behalf of someone in some capacity but the individual
23 files bankruptcy and it's a disqualifier to act? Have you
24 taken the property away from the entity that was authorized to
25 act?

1 MR. SEABOLT: Well, the issue comes down to, when is
2 that property interest being impacted here?

3 THE COURT: Well, I didn't -- that's the point. Is
4 it a property interest?

5 MR. SEABOLT: Well, I would submit, Your Honor, that
6 here it is. It may not be the claim. It may not be ownership
7 of the claim. But it is still a right, still the ability to
8 assert that claim, and still the ability to obtain value. The
9 value's going to come into the --

10 THE COURT: Well, then go back --

11 MR. SEABOLT: -- estate --

12 THE COURT: -- go back to -- it's not going to go
13 into your estate.

14 MR. SEABOLT: Oh, I understand that.

15 THE COURT: Right.

16 MR. SEABOLT: But --

17 THE COURT: Go back to Mr. Hamilton's example of a
18 shareholder in a corporation that has derivative -- the ability
19 to take derivative action pre-petition; they file bankruptcy
20 and then the corporation files. Hasn't that standing vested in
21 the estate of the corporation away from the individual who may
22 have owned one share?

23 MR. SEABOLT: Well, if -- that goes back to the
24 standing. You said the standing?

25 THE COURT: Standing, right.

1 MR. SEABOLT: Well, I thought that the original
2 example was, the assumption was that there could be standing
3 here, whether brought by the creditors' committee or otherwise.
4 And if that standing does exist, if that standing does exist,
5 that is a right. That is a property interest. And an interest
6 in being able to assert that claim derivatively and bringing
7 value in and recognizing the value would ultimately go to this
8 estate, but my client, as a claimant --

9 THE COURT: That would lead to absurd results. How
10 could you manage a case like that?

11 MR. SEABOLT: I --

12 THE COURT: It would be absurd.

13 MR. SEABOLT: Well, Your Honor, even if -- I still go
14 back to the original point that I made.

15 THE COURT: What would be the meaning, then, of
16 vesting in a debtor the derivative actions upon filing, if each
17 shareholder could still -- who happen to be in bankruptcy, say
18 wait a minute, my right to do that hasn't been impacted? I
19 could still bring a derivative action because the automatic
20 stay prevented the operation of law that would normally vest
21 that shareholder's right to bring a derivative action back into
22 the estate.

23 MR. SEABOLT: Your Honor, I believe there actually
24 are examples of instances where derivative claims have been
25 brought in the name of a debtor and those claims have been

1 allowed to continue.

2 THE COURT: Sure. They lift the stay and ask to
3 represent the estate. That hasn't happened here.

4 MR. SEABOLT: No, it hasn't, Your Honor. And I'm not
5 asking to do it right now. What I am asking is --

6 THE COURT: But that's the right to have stand --
7 that's the basic can I have standing or can I continue my
8 standing to act on behalf of the estate.

9 MR. SEABOLT: Right.

10 THE COURT: Right. But since that hasn't happened
11 and no one's granted you, revested that right in you, that
12 right you had vested in the debtor upon the debtor's filing of
13 bankruptcy. And there's no effort been made to revest it.

14 MR. SEABOLT: Not at this point, Your Honor. And all
15 I am asking, given how early this case is in the process, is to
16 preserve that right.

17 THE COURT: Well, then you're getting to the
18 substantive issue as to whether or not to lift the automatic
19 stay. Because by asking to revest, you acknowledge that it
20 vested back into the estate. So there's nothing to do with the
21 automatic stay, and it's back to the substantive issue, should
22 this relief be granted at all?

23 MR. SEABOLT: Okay. Understood what you're saying,
24 Your Honor. I understand your point. But I do get back to
25 that initial point that I made which is, at this early stage in

1 the proceedings, this type of compromise, this type of release,
2 ought not be granted in the context of a 363 sale, not a plan
3 of reorganization, particularly when the record demonstrates
4 that there's been no investigation whatsoever of what these
5 potential claims are or what the value of those claims are.

6 THE COURT: All right.

7 MR. SEABOLT: Thank you, Your Honor.

8 THE COURT: Thank you. All right, Mr. Hamilton.

9 MR. HAMILTON: Thank you, Your Honor. First,
10 counsel's suggestion that this is a third-party release that is
11 normally done in the context of a plan, I think is a semantical
12 game with the word third-party release. We are releasing our
13 claims against Cerberus and its affiliates and Daimler and its
14 affiliates. It's not what parties or people normally refer to
15 third-party releases in the context of a plan, where a plan
16 purports to release claims held by nondebtors against other
17 non debtors. That is typically done in a plan for
18 consideration, as provided --

19 THE COURT: I understand.

20 MR. HAMILTON: -- in a plan. This is a typical 9019
21 action in which the debtor-in-possession, standing in the shoes
22 of a trustee, exercises its business judgment that it's in the
23 best interests of all of its creditors to compromise the claims
24 of the estate against third parties for benefits that are
25 received that benefit all interested parties in the estate.

1 Second, counsel's suggestion that we haven't done the
2 analysis that's necessary to exercise that business judgment is
3 erroneous. What Mr. Chapman said in response to his questions
4 on cross examination, is that the debtors haven't done a
5 factual investigation into the possible claims that we may have
6 with respect to Cerberus and Daimler and their affiliates. And
7 that was a correct answer of Mr. Chapman. That doesn't mean
8 the debtors have not considered what the possible recovery is
9 on any potential claims that might be pursued, and whether
10 those benefits of possible recoveries on such hypothetical
11 claims are substantially outweighed by the benefits of pursuing
12 this transaction at this time.

13 And, in fact, that's exactly what the debtors have
14 done here. They have looked at the potential possible claims
15 that could be pursued against Daimler or Cerberus and their
16 affiliates, whether it be fraudulent conveyance, whether it be
17 breach of fiduciary duty, or any other type of action, they've
18 looked at the potential theories that could be asserted, and
19 have determined that to undertake the forensic investigation to
20 analyze whether or not such claims could prevail, would be one,
21 extremely protracted process, and two, extremely expensive.
22 And that's important, because there's no money here in this
23 estate to fund such an investigation and such protracted
24 litigation.

25 The other thing that they have determined is that

1 even if you could undertake that factual investigation, find a
2 claim that might have merit, and pursue it, there is no claim
3 that appears to have any potential recovery that could exceed
4 the threshold to make it worthwhile for the estate. And in
5 that context, you need to keep in mind, Your Honor, that the
6 government, of both the United States and Canada, pursuant to
7 their DIP loan, have a lien on whatever recovery is made on
8 these claims that we are compromising in this settlement. That
9 lien is in excess of 4 billion dollars. Which means that even
10 if we could find a claim that after extensive and expensive
11 factual investigation we could pursue, unless such claim could
12 be pursued and result in a monetary recovery that exceeded 4
13 billion dollars, there would be no benefit to the creditors of
14 this estate. It would go to the government. And the
15 government has not indicated any interest in funding such
16 litigation nor funding a factual investigation that preceded
17 such litigation, nor has the government objected to these
18 releases.

19 Second, independent of that 4 billion dollar
20 threshold, you also have to keep in mind, Your Honor, that the
21 primary purpose of this settlement is to get Daimler to
22 contribute the 600 million dollars in cash and provide the 200
23 million dollar guarantee to the PBGC for the benefit of our
24 pension plans, which will address the extreme under-funding in
25 the plans at this time, which will eliminate or virtually

1 eliminate the risk that the PBGC will undertake to terminate
2 the plans involuntarily prior to the closing of the Fiat
3 transaction, in order to prevent the 1 billion dollar guarantee
4 given by Daimler from going into the ether upon a change of
5 control.

6 The benefit of this transaction, the benefit of
7 releasing these claims enables us to consummate the Fiat
8 transaction. Without that benefit we have no Fiat transaction,
9 and we are in a freefall liquidation in which we might then be
10 able to pursue, if we could find the money, these hypothetical
11 claims against Cerberus and Daimler, but the ultimate result
12 would be a far less recovery for all people that have an
13 interest in these estates. That is why the debtors' board, in
14 the exercise of their business judgment, made the determination
15 that the compromise of these claims on these terms for these
16 benefits was clearly in the benefit of all of the parties with
17 interests in these estates, and therefore we ask the Court to
18 approve it on that basis.

19 THE COURT: All right. Anyone else wish to be heard?

20 MR. STUART: Yes, Your Honor. Walter Stuart on
21 behalf of CG Investment Group LLC and CG Investor LLC, which
22 are referred to in these proceedings as Cerberus.

23 I simply wanted to add a couple of citations to echo
24 the points made by Mr. Hamilton with respect to ownership of
25 these derivative claims, since no one had filed anything in

1 writing before the Court in response to the objection from
2 Getrag. One is the case of In re 1031 Tax Group, which is
3 found at 397 B.R. 670, a 2008 case in the Southern District,
4 for the point that a derivative action clearly belongs to the
5 estate. And perhaps directly relevant is the case of In re
6 Mrs. Weinberg's Kosher Foods, Inc., at 278 B.R. 358, in the
7 Southern District, 2002, which held that settlements may bind
8 third parties, including creditors, who seek to assert
9 derivative claims on behalf of the debtor or the debtor's
10 estate. So I simply wanted to point out those two precedents.
11 Thank you.

12 THE COURT: All right. Anyone else?

13 MS. FELDSTEIN: Your Honor, I apologize, Hydee
14 Feldstein. I'm not clear on whether you're simply dealing with
15 this objection and then we would take up other matters
16 afterwards, or whether you wish to hear all comments or
17 reservations with respect to the motion before you at this
18 time.

19 THE COURT: Well, I was under the impression that
20 there was one remaining objection and everything else was going
21 to be worked out with language changes. Now, if that is not an
22 accurate state of the affairs of this matter, I guess let me
23 know.

24 MS. FELDSTEIN: Your Honor, I believe everything,
25 with one small language issue has been worked out. And perhaps

1 if I could take a moment to explain to the Court what that
2 issue is?

3 We came before this Court on a binding term sheet and
4 a proposed release on May 19th. The issue that the purchaser
5 has had with the form in which the settlement has been
6 negotiated as amongst the parties has to do with timing. At
7 this particular juncture, Chrysler LLC and the other debtors
8 before this Court have a number of subsidiaries who are not
9 debtors before this Court. If, in fact, the release of Daimler
10 and Cerberus and their affiliates were to take place after the
11 sale, after the point in time at which the purchaser had
12 acquired that which it thought it was acquiring under the
13 master transaction agreement in the sale, we would have no
14 issues.

15 The issue arises because this settlement agreement
16 and release is not only coming before the Court, but by its
17 terms, is now likely to take effect before the purchase
18 agreement is consummated. Accordingly, the scope and the
19 extent of the releases as negotiated between the estates and
20 Cerberus and Daimler, needed to be revisited in light of the
21 purchased assets, the assumed contracts and the nondebtor
22 subsidiaries, who the purchaser assumed it was acquiring as
23 part of the master sale transaction.

24 Under the master transaction agreement, specifically
25 section 5.01(b)(15), the debtors cannot, prior to consummation

1 of the sale, enter into any affiliate transaction other than as
2 set forth in a disclosure schedule or in the ordinary course of
3 business, without Fiat's consent. Accordingly, Fiat did not
4 file an objection to this matter. Whether it came before the
5 Court before or after the sale seemed an irrelevancy to us. If
6 it came before the Court after the sale, we no longer had an
7 interest, since no release could, in fact, affect the entities
8 whose equity interests we were acquiring or the assets we were
9 purchasing. If it came before the Court prior to the closing
10 of the sale, we believed we were protected under the master
11 transaction agreement section 5.01(b)(15).

12 We have spent the last several hours, I think, and
13 the last several days, Your Honor, productively. I believe we
14 have a settlement agreement that is agreed to by all parties,
15 including Fiat as the purchaser, with one small exception,
16 which we will continue to try to work on. The sections of the
17 settlement agreement that would come before you have two types
18 of releases. Section 6(a) of the document has specific
19 releases that are defined with respect to specific contracts
20 and agreements that the purchaser understands and can look to.
21 Section 6(b) is a more general release.

22 The only issue on which we have not yet reached
23 agreement is whether the more general release would be won by
24 the debtors' only or would pick up the nondebtor subsidiaries.
25 There is a carve-out that we've been working on to ensure that

1 purchased assets and assumed contracts by the debtors -- the
2 release by the debtors does not pick up purchased assets or
3 assumed contracts as transferred to the purchaser under the
4 master transaction agreement. And we are attempting to make
5 that carve-out parallel such that the nondebtor subsidiaries
6 also transfer their assets and their liabilities in their
7 entirety, since we are applying the equity to the purchaser.
8 But it is the scope of the release and how it intersects with
9 those nondebtor subsidiaries who are not before Your Honor that
10 has been the sticking point.

11 This is not simply a question of some insignificant
12 subsidiaries. The Canadian debtors who, as the Court knows,
13 represent twenty percent or so of the financing that is being
14 provided in connection with the sale, are not debtor
15 subsidiaries before this Court. And so the extent to which
16 those entities are releasing claims against affiliates of
17 Daimler or Cerberus when there are a number of ongoing
18 commercial relationships, is what has created the issue.

19 THE COURT: All right. Thank you. Anyone care to
20 respond to that?

21 (Pause)

22 MR. HAMILTON: Your Honor, I'm not sure exactly how
23 you would like us to proceed. But let me tell you --

24 THE COURT: I'm going to give you some options. I'm
25 going to leave here, as I said, I think -- I have to leave by

1 5:15. In the interim, I was going out for an hour and then
2 coming back. So I would be back here by 4:15, 4:30. Does that
3 give you enough time to work out whatever differences you have
4 if I grant the motion?

5 MR. HAMILTON: It gives me the time, Your Honor, that
6 I need. But I'm hopeful the parties will be able to work these
7 out as well. What we would like to have for you by the time
8 you come back is a document that represents what the debtors
9 seek authority to enter into, and then hand it -- provide it to
10 you. And then to the extent that the parties are not ready to
11 execute it until certain matters are resolved, as long as it's
12 within the authority that the Court has granted us to, we would
13 just submit a conforming copy that's executed at a later time.
14 That, I think we can get done this afternoon.

15 THE COURT: And for that, you would need to come back
16 on the record?

17 MR. HAMILTON: Yes. We would need an order
18 authorizing us to enter into that settlement agreement in
19 substantially that form. Then we could take -- what I have
20 here is a work of a lot of lawyers with handwritten marks and
21 everything. We could get that approved as at least we'd have
22 authority to enter into it on that basis. We would then create
23 a typewritten document and get parties' signatures and file a
24 conforming document with the parties' signatures at a later
25 time. It may be that there will be one or perhaps two disputes

1 that the Court will need to rule on if we cannot resolve the
2 concerns that Ms. -- that counsel for Fiat just articulated
3 here.

4 I don't want to concede that we agree with her
5 characterization of her rights under the MTA. But it is
6 certainly fair to say that we need to get as close as we can to
7 consent among all parties, including the purchaser, on these
8 releases.

9 THE COURT: All right. What I believe I can do now,
10 though, is rule on the objection that was argued.

11 MR. HAMILTON: Thank you.

12 THE COURT: All right? And then leave it for later
13 this afternoon to resolve any other issues. First, I think the
14 claims at issue belong to the estate. The automatic stay, the
15 Court finds, is not implicated -- the automatic stay of the
16 objectors of state is now implicated by the actions being
17 sought to be approved by the Court, and that the debtor has
18 established a basis under 9019 to enter into this agreement and
19 the associated relief. And I would grant the relief subject to
20 the presentation of the order along with the agreement, and the
21 agreement of the parties to the language therein. All right?

22 So I would say, probably 4:15 -- well, I guess about
23 4:30, we should reconvene. That would give forty-five minutes
24 to argue any points about language.

25 MR. HAMILTON: Thank you, Your Honor.

1 THE COURT: All right. Thank you.

2 (Recess from 2:41 p.m. to 4:18 p.m.)

3 THE COURT: Please be seated. Mr. Hamilton.

4 MR. HAMILTON: Thank you, Your Honor. And if I could
5 beg your indulgence, not to be distracted by the scurrying of
6 activity behind me. We are assembling the settlement agreement
7 that has been agreed to with the language by all the parties
8 with one exception. The agreed upon language involves a lot of
9 handwritten notations and markups and inserts. But it has, as
10 I understand it, resolved the concerns that were expressed by
11 counsel for New Chrysler, the purchaser, before the break.

12 And as we assemble this document, what we would
13 propose to do is submit it to the Court, and to the extent the
14 Court finds it acceptable, with a proposed order that
15 authorizes the debtor to enter into a settlement agreement and
16 to execute this settlement agreement, and a cleaned-up version
17 that we would clean up over the night, get the parties to sign
18 it, and file it tomorrow or Friday morning. What I need to do
19 now is bring to the Court's attention the one remaining issue
20 that I believe has not been resolved, so that we can be clear
21 how we're going to go forward in that regard.

22 In the motion that we filed on May 19th, at that time
23 we asked the Court for authority to enter into a settlement
24 agreement based on the binding term sheet and the release that
25 we set forth in Schedule F that was attached to the motion.

1 The Schedule F was the releases that was the broader releases
2 from the estates that were required in order to have Cerberus
3 and therefore Daimler forgive the second-tier debt of 2 billion
4 dollars. Those broader releases involved a release of Daimler
5 and Cerberus and their affiliates of all general claims, not
6 just those arising under the contribution agreement and related
7 agreements, with the carve-out exception for ongoing
8 operational agreements, which was the source of all the
9 problems with Ms. Feldstein and the purchaser of the assets,
10 which we have now resolved.

11 In the Schedule F that we submitted, and I apologize,
12 Your Honor, I took it how I got it at the time. It had a lot
13 of complicated definitions and it takes a while to work your
14 way through it. But in the Schedule F, 6(b) involved -- or
15 paragraph b of Schedule F involved the claims of the estates
16 that were going to be released. And in Schedule F, paragraph
17 b, what we had proposed on May 19th was for the debtors to
18 release all claims against Cerberus and Daimler and their
19 related parties subject to the carve-out for ongoing
20 operations.

21 In the definitions, if you looked at the definition
22 of "related party" in what we filed in Schedule F -- I'm sorry,
23 "related persons", it said: "Related persons means with respect
24 to any person, such person's predecessor, successors, assigns,
25 and present and former affiliates (and each of their respective

1 present and former members, partners, equity holders,
2 officers)..."in each case, acting in such capacity, and any
3 person claiming by or through them; provided that none of FinCo
4 HoldCo, or any of its direct or indirect subsidiaries shall
5 constitute a related person of any party hereto."

6 What that means is, in the document that we submitted
7 on May 19th, we had carved out from the release that we are
8 proposing to provide to Cerberus, a release of FinCo and its
9 immediate parent FinCo HoldCo. We weren't going to release our
10 general claims against FinCo HoldCo or its subs, including
11 FinCo.

12 Since the time we filed this document on May 19th,
13 we've engaged in further negotiations with Cerberus on this
14 point. And the document that we are going to hand up to the
15 Court that has all the little arrows and inserts and
16 handwritten notations, that everybody's been working on
17 diligently since 6 o'clock this morning, it involves -- it
18 contemplate that the estates will release their claims against
19 FinCo generally, subject to a specified carve-out with respect
20 to ongoing operational agreements, including the MAFA. So we
21 aren't releasing any claims that we have against FinCo for
22 breach of the MAFA or anything in connection with the MAFA.

23 However, we are providing a general release to FinCo,
24 as requested by Cerberus. We are demanding, requesting, that
25 Cerberus use its efforts to cause FinCo to give us a comparable

1 general release, subject to a carve-out for ongoing operational
2 agreements, including the MAFA. At this time, the document
3 that we are handing up to you does not obligate Cerberus to
4 require its subsidiary FinCo to give us the comparable, mirror,
5 general release that we are giving to FinCo at Cerberus'
6 request.

7 The debtors do not intend, at this time, to sign this
8 settlement agreement until Cerberus agrees to that provision.
9 However we do intend to continue to negotiate this provision
10 with Cerberus and we are now seeking authority to enter into an
11 agreement that will allow us to consummate this settlement
12 agreement. And if we need to soften or compromise or reach
13 some sort of settlement with Cerberus on this issue, we can do
14 so and modify the agreement without having to come back to
15 court and notice everybody to have another hearing to get
16 additional authorization to do so.

17 And with that one proviso, unless I've been
18 misinformed by the parties, I think all other issues have been
19 resolved, and I think, if they've finished assembling it behind
20 my back, I'm ready to hand it up to the Court.

21 THE COURT: All right.

22 MR. HAMILTON: It's not only a settlement, Your
23 Honor -- settlement agreement, but attached to it is also the
24 new guarantee that Daimler will provide for the pension funds
25 going forward, I believe. Is that right? That the 200 million

1 dollars going forward. And it has a handwritten modification
2 as well that will need to be made when we file a conforming
3 copy.

4 And again, Your Honor, on behalf of everybody here,
5 we do appreciate the Court's indulgence and cooperation. Under
6 the circumstances, this is what we were able to do. May I
7 approach?

8 THE COURT: Yes, please. Thank you. I just wanted
9 to say in furtherance of the Court's approval a couple hours
10 ago of this, that I wanted to add to that by saying with
11 respect to the reason that I find that the debtor has complied
12 with its obligations under 9019; is that the record shows that
13 any benefit that would flow, arguably, from any claims that
14 could be asserted, would benefit the DIP lenders, and could
15 only conceivably -- could not conceivably reach the unsecured
16 creditor body, and the DIP lenders have not opposed the
17 releases at issue.

18 All right. With that, I will grant the relief as
19 requested. I have the marked up version. Anyone have any
20 desire of trying to fix this here? You're more than welcome to
21 get a computer and do it. And then we can give you access --
22 I'm pretty sure that you can get access to that computer over
23 there.

24 MR. HAMILTON: Your Honor, we could do that. I think
25 in order to get the parties to actually execute the document,

1 which is the preferred approach, we may need till tomorrow
2 anyway.

3 THE COURT: All right.

4 MR. HAMILTON: So we might as well take it back to
5 Jones Day and get it done.

6 THE COURT: All right. Fine.

7 MR. HAMILTON: Can we prevail upon the Court to
8 photocopy what we handed to you so we could take it back with
9 us?

10 THE COURT: You actually want me to photocopy it, or
11 you want to --

12 MR. HAMILTON: I'm sure we'll find someone.

13 THE COURT: It will get photocopied.

14 MR. HAMILTON: Thank you, Your Honor.

15 THE COURT: All right. Thank you.

16 (Proceedings concluded at 4:28 p.m.)

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2 C E R T I F I C A T I O N

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4 I, Sharona Shapiro, certify that the foregoing transcript is a
5 true and accurate record of the proceedings.

6

7

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16 Date: June 4, 2009

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